

TOWNSEND AND TOWNSEND AND CREW LLP
JAMES G. GILLILAND, JR. (State Bar No. 107988)
TIMOTHY R. CAHN (State Bar No. 162136)
HOLLY GAUDREAU (State Bar No. 209114)
RYAN BRICKER (State Bar No. 269100)
Two Embarcadero Center, 8th Floor
San Francisco, California 94111
Telephone: (415) 576-0200 / Facsimile: (415) 576-0300
Email: jggilliland@townsend.com, trcahn@townsend.com,
hgaudreau@townsend.com, rbricker@townsend.com

JENNIFER Y. LIU (State Bar No. 164618)
SONY COMPUTER ENTERTAINMENT AMERICA LLC
919 East Hillsdale Boulevard, 2nd Floor
Foster City, California 94404
Telephone: (650) 655-8000 / Facsimile: (650) 655-8042
Email: jennifer_liu@playstation.sony.com

**Attorneys for Plaintiff
SONY COMPUTER ENTERTAINMENT AMERICA LLC**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT
AMERICA LLC, a Delaware limited liability
company.

Plaintiff.

V.

ZOOMBA LDC;
WWW.SHOPPSJAILBREAK.COM; VLAD
GAZOUNE, individually and doing business as
ZOOMBA LDC and
WWW.SHOPPSJAILBREAK.COM; THAHN
NGUYGEN, individually and doing business as
USATECHCITY, LTD; ARTHUR BATES II,
individually and doing business as PSP PIT
STOP; TOM NOOKER, individually and doing
business as
WWW.BUYPSP3JAILBREAK.WEBS.COM; ALEX
ESQUIVEL, individually and doing business as
NDSGAMER; BIN LE ZHONG aka BEN LEE,
individually and doing business as
WWW.PS3BREAKONLINE.COM; and FAI KING
FONG, individually and doing business as
WWW.PS3BREAKONLINE.COM; and
HUANRAN LEE, individually and doing business
as WWW.GETPS3BREAK.COM; and DOES 9
through 100.

| Case No. C-10-03909 VRW

**STIPULATED PRELIMINARY
INJUNCTION AS TO DEFENDANT TOM
NOOKER, INDIVIDUALLY AND ON
BEHALF OF
WWW.BUYPSP3JAILBREAK.WEBS.COM;
[PROPOSED] ORDER**

Date: October 12, 2010
Time: 10:00 a.m.
Dept.: Courtroom 6, 17th Floor
Judge: Hon. Vaughn R. Walker

Defendants.

1 On August 31, 2010, plaintiff Sony Computer Entertainment America LLC ("SCEA")
 2 filed a Complaint against defendants Zoomba LDC, www.shoppsjailbreak.com, and Does 1
 3 through 100. On October 1, 2010, SCEA filed its First Amended Complaint, adding Vlad
 4 Gazoune, individually and doing business as Zoomba LDC and www.shoppsjailbreak.com;
 5 Thanh Nguyen, individually and doing business as USATechCity, Ltd.; Arthur Bates II,
 6 individually and doing business as PSP Pit Stop; Tom Nooker, individually and doing
 7 business as www.buyps3jailbreak.webs.com; Alex Esquivel, individually and doing business
 8 as NDSGamer; Bin Le Zhong aka Ben Lee, individually and doing business as
 9 www.ps3breakonline.com; Fai King Fong, individually and doing business as
 10 www.ps3breakonline.com; and HuanRan Lee, individually and doing business as
 11 www.getps3break.com as Defendants.

12 SCEA alleges that Defendants are trafficking in circumvention devices known as "PS3
 13 Jailbreak Devices," and identified by many names, including but not limited to, "PS Jailbreak,"
 14 "PS3 Break," "PS3 Modchip," "PS3 Free Revolution Adapter," "PS3 Key," "PS3 Yes!,"
 15 "PS3break.com," "P3Free," and the "UsbBreak" (collectively, "PS3 JAILBREAK DEVICES").
 16 SCEA further alleges that certain Defendants are trafficking in "Backup Manager" software,
 17 also known as, for example, SDK 1.92 ("BACKUP MANAGER"). The foregoing devices and
 18 software, as well as the software known as, for example, "PSGroove", "PSFreedom," and
 19 "OpenPSJailbreak" (collectively, "PS3 JAILBREAK SOFTWARE"), bypass technological
 20 protection measures embedded within the PlayStation®3 computer entertainment system
 21 developed by plaintiff SCEA in violation of federal copyright laws, including the Digital
 22 Millennium Copyright Act. SCEA has also alleged that Defendants violated federal
 23 trademark and unfair competition laws.

24 SCEA and Defendant Tom Nooker, individually and doing business as
 25 www.buyps3jailbreak.webs.com (hereinafter "Defendant") have agreed to a preliminary
 26 injunction governing this dispute upon the following stipulated facts. Each party has waived
 27 the right to appeal regarding this preliminary injunction. Each party will bear its own fees and
 28 costs in connection with this preliminary injunction. Should judicial enforcement of any of the

1 terms of this preliminary injunction become necessary in the future, the prevailing party will
 2 be entitled to its attorneys' fees and costs. The parties agree that violation of this preliminary
 3 injunction by Defendant would cause irreparable harm to SCEA, and if such a violation
 4 occurs, SCEA will be entitled to immediate relief from this Court, including but not limited to
 5 appropriate monetary relief. Defendant consents to the jurisdiction of this Court to enforce
 6 the terms of this injunction, including but not limited to contempt proceedings.

7 **I. STIPULATED FACTS AND CONCLUSIONS**

8 1. This Court has subject matter jurisdiction over this lawsuit and personal
 9 jurisdiction over each of the parties for the purposes of this action. Venue is proper in this
 10 Court.

11 2. SCEA markets and sells home entertainment products, including the
 12 PlayStation 3 computer entertainment system, a video game entertainment system featuring
 13 hardware and firmware designed for the playing of video games (collectively, "the PS3
 14 System").

15 3. The PS3 System utilizes technological protection measures ("TPMs") that
 16 effectively control access to copyrighted works protected under the Copyright Act, 17 U.S.C.
 17 § 101, *et seq.*, protect the rights of the copyright owners of those works, and prevent
 18 unlicensed or copied software from playing on the PS3 System. These TPMs ensure that
 19 video games cannot be copied either to the PS3 System's hard drive or to an external drive
 20 and are therefore essential to protect the rights of SCEA with respect to its copyrighted works
 21 and/or to prevent video game piracy.

22 4. SCEA develops and publishes its own video game software for the PS3 System
 23 and also licenses third party licensees to develop interactive entertainment software products
 24 for the PS3 System. With respect to the video game software developed and published by
 25 SCEA itself, SCEA owns the valuable copyrights to the audiovisual images, stories,
 26 characters and other protectable features of the copyrighted works. Among other copyright
 27 registrations, SCEA has registered copyrights nos. PA 1-616-055 (*Ratchet & Clank Future:*
 28 *Tools of Destruction*), PA 1-619-506 (*Resistance 2*), and PA 1-611-286 (*Uncharted Drake's*

1 Fortune). SCEA's copyrighted works are referred to collectively as the "SUBJECT WORKS."

2 5. SCEA, under agreements with Sony Computer Entertainment Inc., holds the
 3 exclusive license in the United States for the following trademarks, among others:
 4 Registration No. 2259732 [stylized "PlayStation" word mark]; 2087964 [stylized "PlayStation"
 5 word mark]; Registration No. 2859185 ["PS" stylized word mark]; Registration No. 2863923
 6 ["PS3" stylized word mark]; Registration No. 3147147 ["PSP" word mark]; Registration No.
 7 3025454 ["PSP" stylized word mark] and Registration No. 2984420 ["PS.com" word mark].
 8 The PS3, PS and PS.com marks displayed on the PS3 JAILBREAK DEVICES are virtually
 9 identical to SCEA's registered marks.

10 6. Defendant has promoted, marketed, distributed, imported, sold, offered to the
 11 public, provided or trafficked in technology, products, services and devices – including,
 12 without limitation, the PS3 JAILBREAK DEVICES and the BACKUP MANAGER – that
 13 circumvent the PS3 System's TPMs in violation of the Digital Millennium Copyright Act, 17
 14 U.S.C. § 1201, *et seq.*, and contribute to copyright infringement of the SUBJECT WORKS
 15 under 17 U.S.C. § 101 *et seq.* Defendant conducts at least some of his business activities
 16 from a website located at www.buyps3jailbreak.webs.com.

17 7. The PS3 JAILBREAK DEVICE and the BACKUP MANAGER allow users to
 18 create unauthorized and illegal copies of PlayStation 3 video games and store those copies
 19 on the PS3 System's internal hard drive or on an external hard drive. The primary function of
 20 the PS3 JAILBREAK DEVICE and the BACKUP MANAGER is to circumvent the TPMs
 21 SCEA has implemented to protect copyrighted works, including its SUBJECT WORKS.

22 8. The PS3 JAILBREAK DEVICES and the BACKUP MANAGER, which
 23 Defendant has promoted, marketed, distributed, imported, sold, offered to the public,
 24 provided or trafficked in, are designed or produced primarily to bypass the TPMs in the PS3
 25 System.

26 ///

27 ///

28 ///

1 II. **ORDER**

2 **ACCORDINGLY, IT IS HEREBY ORDERED** by consent of the parties that Defendant
3 Tom Nooker, individually and doing business as www.buyps3jailbreak.webs.com, whether as
4 an individual or as a principal, officer, director or employee of any business entity, and his
5 agents, attorneys, servants, employees, distributors, suppliers, representatives and all other
6 persons or entities in privity or acting in concert or participation with Defendant who receive
7 notice of this Preliminary Injunction, shall be and hereby are preliminarily enjoined and
8 restrained from:

9 1. selling, offering for sale, marketing, advertising, promoting, installing,
10 importing, exporting, offering to the public, distributing, providing, or otherwise
11 trafficking in, any technology, product, service, device, component or part that
12 circumvents any TPM in any generation of PlayStation hardware or software, including
13 but not limited to, any and all of the PS3 JAILBREAK DEVICES, any copies or
14 versions of the BACKUP MANAGER, any copies or versions of the PS3 JAILBREAK
15 SOFTWARE, or any other hardware or software which bypasses the TPMs in the PS3
16 System;

17 2. selling, offering for sale, marketing, advertising, promoting, installing,
18 importing, exporting, offering to the public, distributing, providing, or otherwise
19 trafficking in, unauthorized or illegal copies of any generation of PlayStation video
20 games, including but not limited to, PS3 System video games;

21 3. providing links from any website to any other website selling, offering for
22 sale, marketing, advertising, promoting, installing, importing, exporting, offering to the
23 public, distributing, providing, or otherwise trafficking in any technology, product,
24 service, device, component or part that circumvents any TPM in any generation of
25 PlayStation hardware or software, including but not limited to, any and all of the PS3
26 JAILBREAK DEVICES, any copies or versions of the BACKUP MANAGER, any
27 copies or versions of the PS3 JAILBREAK SOFTWARE, or any other hardware or
28 software which bypasses the TPMs in the PS3 System;

1 4. Assisting, facilitating or encouraging others to engage in the conduct set
2 forth above in 1-3 in violation of the Stipulated Injunction.

3

4 **IT IS FURTHER ORDERED** that neither Defendant, nor his officers, employees,
5 attorneys or representatives, nor any and all other persons acting in concert or participation
6 with Defendant, with notice of this Order, shall destroy, erase, delete, dispose of, or alter any
7 documents or records, in whatever format, including electronic documents, computer files,
8 computer discs and drives, that relate to, reflect, record, or contain any information regarding
9 the manufacture, distribution, promotion, marketing, advertising, purchase, sale, offer to sell,
10 trafficking, import, export, installation, payment, storage, and/or shipment of any and all of the
11 PS3 JAILBREAK DEVICES, copies or any versions of the BACKUP MANAGER, or copies or
12 any versions of the PS3 JAILBREAK SOFTWARE, or any other hardware or software which
13 bypasses the TPMs in the PS3 System, or any communications with any party concerning
14 the manufacture, distribution, promotion, marketing, advertising, purchase, sale, offer to sell,
15 trafficking, import, export, installation payment, storage, and/or shipment of any and all of the
16 PS3 JAILBREAK DEVICES, copies or any versions of the BACKUP MANAGER, copies or
17 any versions of the PS3 JAILBREAK SOFTWARE, or any other hardware or software which
18 bypasses the TPMs in the PS3 System.

19 **IT IS FURTHER ORDERED** that, upon execution of this Preliminary Injunction,
20 Defendant shall preserve intact and then immediately deliver to SCEA's attorneys any and all
21 circumvention devices in Defendant's possession, custody or control, including, but not
22 limited to any and all of the PS3 JAILBREAK DEVICES, copies or any versions of the
23 BACKUP MANAGER, or copies or any versions of the PS3 JAILBREAK SOFTWARE, or any
24 other hardware or software which bypasses the TPMs in the PS3 System. Such goods shall
25 be delivered to SCEA's attorneys at Townsend and Townsend and Crew LLP, Two
26 Embarcadero Center, Eighth Floor, San Francisco, California, 94111, Attn: Timothy R. Cahn,
27 Esq.

1 IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until
2 entry of Judgment or until this Court orders otherwise.
3

4 The undersigned hereby stipulate to the above facts and conclusions and consent to
5 the entry of this Preliminary Injunction, which may be signed in counterparts. Signatures can
6 be obtained and exchanged by facsimile.
7

8 IT IS SO STIPULATED.
9

10 DATED: 10/07/2010 TOWNSEND AND TOWNSEND AND CREW LLP
11

12 By: 
13 JAMES G. GILLILAND, JR.
14 TIMOTHY R. CAHN
15 HOLLY GAUDREAU
16 RYAN BRICKER
17

18 Attorneys for Plaintiff
19 Sony Computer Entertainment America LLC
20

21 DATED: 10/06/2010 By: Tom Nooker
22

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.
24 DATED: 10/12/2010
25

26 
27 HON. VAUGHN R. WALKER
28 UNITED STATES DISTRICT JUDGE
62920857 v1

PROOF OF SERVICE

I, Shelley Lott, declare:

I am employed in the City and County of San Francisco, California; I am over the age of 18 years and not a party to the within action; my business address is Two Embarcadero Center, Eighth Floor, San Francisco, California 94111. On the date set forth below, I served a true and accurate copy of the document(s) entitled: **STIPULATED PRELIMINARY INJUNCTION AS TO DEFENDANT TOM NOOKER, INDIVIDUALLY AND ON BEHALF OF WWW.BUYPSP3JAILBREAK.WEBS.COM; [PROPOSED] ORDER** on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Thanh Nguyen
USA Tech City
7861 13th St., Unit D
Westminster, California 92683
Email: contact@usatechcity.com

Arthur Bates, II
www.psppitstop.com
6307 Sol Duc Dr.
Bremerton, Washington 98311
Email: art.bates@mac.com

Alex Esquivel
www.ndsgamer.com
530 Buckingham Rd., Apt. #521
Richardson, Texas 75081
Email: alexesquivel2004@yahoo.com

Tom Nooker
http://buyps3jailbreak.webs.com
1115 E. Cedar Ave.
Manitowoc, Wisconsin 54220
Email: ttnooker@yahoo.com

Bin Li, Esq.
Law Offices of Bin Li & Associates
A Professional Law Corporation
17800 Castleton St. Ste 605
City of Industry, CA 91748
Tel: 626-839-0277
Fax: 626-839-0322
usbinli@sbcglobal.net
*Attorney for Defendants Bin Li Zhong
aka Ben Lee*
www.ps3breakonline.com; and
Fai King Fong
www.ps3breakonline.com

Via Email only
Vlad Gazoune
Zoomba LDC/shopPSjailbreak.com
10685-B Hazelhurst Dr. #10054
Houston, TX 77043
Telephone: 281-361-7200
Email: vladgazoune@yahoo.com

Via Email only
Zoomba LDC
10685-B Hazelhurst Dr. #10054
Houston, TX 77043
Telephone: 281-361-7200
Email: vladgazoune@yahoo.com

Via Email only
shopPSjailbreak.com
10685-B Hazelhurst Dr. #10054
Houston, TX 77043
Telephone: 281-361-7200
Email: vladgazoune@yahoo.com

Via Email only
HuanRan Lee
www.getps3break.com
Email: sales@getps3break.com and
179608325@qq.com

[By First Class Mail] I am readily familiar with my employer's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s)

1 at my place of business, by placing a true copy thereof, enclosed in a sealed envelope, with
2 postage thereon fully prepaid, for collection and mailing with the United States Postal Service
where it would be deposited with the United States Postal Service that same day in the
ordinary course of business.

3 [By Overnight Courier] I caused each envelope to be delivered by a
4 commercial carrier service for overnight delivery to the offices of the addressee(s).

5 [By Hand] I directed each envelope to the party(ies) so designated on the
service list to be delivered by courier this date.

6 [By Facsimile Transmission] I caused said document to be sent by facsimile
7 transmission to the fax number indicated for the party(ies) listed above.

8 [By Electronic Transmission] I caused said document to be sent by electronic
transmission to the e-mail address(es) indicated for the party(ies) listed above.

9 I declare under penalty of perjury that the foregoing is true and correct and that this
10 declaration was executed this date at San Francisco, California.

11
12 Dated: October 7, 2010



The image shows a handwritten signature in black ink, which appears to read "Shelley Loft". The signature is fluid and cursive, with "Shelley" on the left and "Loft" on the right, connected by a flourish.

Shelley Loft

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28